section 162, Criminal Procedure Code, statements and not acts, subject always to the proviso that the acts are not clearly to be construed as answers to questions such as the placing of a hand upon an accused in answer to the question of the Sub-Inspector to a witness as to which of the persons present is the accused."

To my mind, it is not an unfair summary of the position in India to say that although there is controversy as to the admissibility of the fact of identification at a police identification parade there is considerable unanimity to the effect that statements made in the course of such a parade are inadmissible by reason of section 162 of the Indian Criminal Procedure Code and that in this connection statements must be construed as including actions such as pointing out a person in response to questions.

In the present case I do not think it is necessary for me to express any opinion as to the admissibility of the fact of identification for the evidence in question here is clearly evidence of statements and on this I would not merely follow but would express my agreement with the Indian decisions which have been quoted to the effect that such statements are inadmissible.

I am not impressed by the argument that in some circumstances such statements may be admissible by reason of section 157 of the Evidence Ordinance. The Evidence Ordinance is a general code relating to evidence in all classes of cases. The Criminal Procedure Code relates only to criminal cases. In relation to such cases section 113(i) contains an absolute prohibition of the use as evidence of statements to the police in the course of police investigation except in the circumstances which the section itself sets out and in relation to criminal cases this prohibition must clearly override the general provision of section 157 of the Evidence Ordinance. Section 113(iii) of the Criminal Procedure Code expressly excludes from the prohibition contained in section 113(i) statements falling within sections 27 and 32(i) of the Evidence Ordinance and if it had been intended to extend this exemption to other sections of the Evidence Ordinance presumably the legislature would have said so.

In support of this view I would quote the following passage from the judgment of Murray-Aynsley C.J., in the Singapore case of *Wee Boo Soh v. R.*[10] :—

"In the course of the hearing an officer of the Police gave evidence of statements made by the witness apparently to corroborate the evidence within the meaning of section 157 of the Evidence Ordinance. But I think in criminal matters the use of this section is subject to the restrictions of section 124 of the Criminal Procedure Code. To be admissible such statements must be made either at or about the time when the fact took place or before any authority legally competent to investigate. Here the statements were not made at or about the time when the events took place. They must, to be admissible, have been made in the course of an investigation. They were not admissible under section 117 Criminal Procedure Code. Therefore they fall within the prohibition of section 124 Criminal Procedure Code. If authority is needed for this it is to be found in **Emperor v. Akbar Badoo**[11]."

Section 124 of the Straits Code is the same as section 113 of the Federation Code and section 117 of the Straits Code corresponds to section 107 of the Federation Code.

It follows from what I have said that the evidence of the Police Inspector as to what occurred at the identification parade held at Taiping on 15th March should not have been admitted. As regards the second and third appellants the whole case turned on the question of their identity and I am not prepared to say that had the evidence in question been excluded as it should have been the learned Magistrate would have come to the conclusion that they were guilty. Their appeals are therefore allowed and their convictions quashed.

I would add that so far as I am aware this question of whether evidence of identification parade proceedings is struck at by section 113(i) of the Criminal Procedure Code has not been previously considered in this country. I am also aware that in the past such evidence has been frequently admitted, in fact, I have admitted it myself. In the circumstances, I am prepared if asked to do so to give the necessary certificate for the point to be taken further.

Order accordingly.

Solicitors : *Das & Co.*

INDO-AUSTRALIAN TRADING CO. LTD. v. HIN ANN HUAY KUAN & ORS.

[C. A. (Murray-Aynsley C.J., Mathew C.J. (F.M.) and Knight J.) May 17, 1955]

[Singapore — Civil Appeal No. 27 of 1954]

Landlord and Tenant — Control of Rent Ordinance, 1953 — Claim for possession — Registered Society — Capacity to hold tenancy — Whether protected by the Control of Rent Ordinance — Societies Ordinance (Cap. 217), s. 28.

This was an appeal from the decision of Taylor J. reported in (1954) M.L.J. 245 where the learned Judge held that the purported grant of tenancy in this case to the first respondents, an unincorporated body but a registered society, by its name, operated as an agreement to grant a tenancy to trustees on behalf of the society.

Held: (1) the purported grant of tenancy to the society was inoperative; (2) the Control of Rent Ordinance should not be strained to give protection to those not within its terms; (3) therefore in this case the appellants were entitled to terminate the arrangement permitting the society to use the premises in return for the payment of rent.

[Editorial Note: The Control of Rent Ordinance, 1953, and the Societies Ordinance, Cap. 217 of the 1936 Revised Edition, are now Chapters 242 and 228 respectively of the Laws of the Colony of Singapore, Edition of 1955.]

Cases referred to:—

(1) *Mackenzie Kennedy v. Air Council* (1927) 2 K.B. 517, 533.

(2) *Jarrott v. Ackerley* 113 L.T. 371.

COURT OF APPEAL.

L. A. J. Smith for the appellants.

F. R. N. H. Massey for the respondents.

Murray-Aynsley C.J. : — These proceedings arise out of a rather technical point. The first respondents are an unincorporated body but a registered society. By section 28(b) of Cap. 217 certain provisions are made with respect to the juridical capacity of registered societies including (b) the capacity to sue or be sued in the name in which it was registered. This is not sufficient to incorporate such a body — *Mackenzie Kennedy v. Air Council*[1]. Provision was made for moveable property but not for immoveable property. In the present case the predecessors in title of the appellants purported to grant a monthly tenancy to this society. I think that was inoperative. If authority is needed see *Jarrott v. Ackerley*[2].

It was contended however that the Court should cause the intended transaction to take effect in some other way. The learned Judge considered that the transaction should be construed as an agreement to grant a tenancy to trustees on behalf of the society. This was based on the statutory provision in England in the Law of Property Act 1925 which dealt with the situation created by the prohibition in that Act of the vesting legal interests in land in the case of infants. It has clearly no application here. Here the only thing that the parties intended was that the society should be tenant. The matter would be of no practical importance except for the Control of Rent Ordinance. I do not think that the Court should be influenced by the existence of that Ordinance in deciding whether a tenancy exists or not. The Ordinance restricts the legal rights of the owners in property. I do not think that the law should be strained to give protection to those not within its terms. The society uses the property in question for the presumably admirable purpose of running a school. I think that that is irrelevant. There is nothing here to raise an equity in favour of the society. They have been using the premises in return for the payment of a modest rent. The appellants are entitled to terminate that arrangement. I would allow the appeal with costs and enter judgment for the appellants as claimed also with costs. Deposit to appellants.

Mathew C.J. : — I have had the advantage of reading the judgment of the learned President in this appeal with which I am in entire agreement and have nothing to add.

Knight J. : — At one time I thought there was some force in the suggestion that there was an agreement between the parties to transfer a tenancy — but even if there is anything in this argument I do not know how specific performance could be ordered because the tenants do not exist. This difficulty admittedly might be overcome by the appointment of trustees yet why should equity be involved to give relief to the respondents in a situation in which they have no rights under the common law. The Rent Control Ordinance is artificial, though no doubt necessary. I agree with the learned President that it raises no equity in favour of the Society.

I too would allow the appeal with costs and enter judgment for the appellants as claimed with costs. The deposit will be paid to the appellants.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Allen & Gledhill.*

TEH LEE TONG v. REX

[A. Cr. J. (Spenser Wilkinson J.) November 10, 1951]

[Penang — Criminal Appeal No. 22 of 1951]

Criminal procedure — Summary trial — Whether prosecution is bound to call as witnesses all persons from whom statements have been taken.

The fact that a witness is really a defence witness is a sufficient reason for not tendering him for cross-examination.

In this case the learned Judge considered the question whether it is incumbent on the prosecution in a summary trial to call as witnesses all persons from whom statements have been taken. He summarised the position as follows:

(1) All witnesses from whom statements have been taken should be brought to the Court by the prosecution, except those whose evidence will clearly and obviously throw no light on the case; any witness not so brought to Court must be made available to the accused, should he desire to call him.

(2) Having brought the witnesses to Court the prosecuting officer is not bound to call or to offer for cross-examination a witness whose evidence is in his opinion unnecessary or is obviously hostile

(3) The existence of witnesses brought to Court but not called or offered for cross-examination under (2) above must be brought to the attention of the Court so that they are available to be called by the defence, or by the Court should the Court consider this necessary.

[Editorial Note: The same question in its application to an Assize Court was considered by the Privy Council in **Adel Muhammed el Dabbah v. Attorney-General** (1944) A.C. 156; (1944) 2 All E.R. 139, where it was held that the prosecution in a criminal case has a discretion as to what witnesses they shall call. It is consistent with the discretion that it should be a general practice of prosecuting counsel, if they find no sufficient reason to the contrary,